

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

KAIFI LLC,

Plaintiff,

v.

T-MOBILE US, INC. and

T-MOBILE USA, INC.,

Defendants.

**CASE NO. 2:20-CV-281-JRG**

**JURY TRIAL DEMANDED**

KAIFI LLC,

Plaintiff,

v.

VERIZON COMMUNICATIONS INC.;  
CELLCO PARTNERSHIP D/B/A VERIZON  
WIRELESS; VERIZON SERVICES CORP.;  
VERIZON ENTERPRISE SOLUTIONS, LLC;  
VERIZON BUSINESS GLOBAL LLC;  
VERIZON BUSINESS NETWORK  
SERVICES, LLC; VERIZON CORPORATE  
SERVICES GROUP INC.; VERIZON DATA  
SERVICES, LLC; VERIZON MEDIA INC.;  
and VERIZON ONLINE, LLC,

Defendants.

**CASE NO. 2:20-CV-00280-JRG**

**JURY TRIAL DEMANDED**

**JOINT MOTION TO CONSOLIDATE CLAIM CONSTRUCTION HEARINGS AND TO  
AMEND DCO FOR CLAIM CONSTRUCTION BRIEFING**

Pursuant to Federal Rule of Civil Procedure 42(a) and Local Rule CV-42(a), Plaintiff KAIFI LLC and Defendants Verizon Communications Inc.; Cellco Partnership D/B/A Verizon Wireless; Verizon Services Corp.; Verizon Enterprise Solutions LLC; Verizon Business Global LLC; Verizon Business Network Service LLC; Verizon Corporate Services Group Inc.; Verizon

Data Services LLC; Verizon Media Inc.; and Verizon Online LLC. (collectively, “Verizon” or “Defendants”) jointly move the Court to consolidate for the purposes of claim construction the two above-captioned cases (collectively “Related Cases”). To achieve efficient and just resolution of the Related Cases and to lessen the burden on the Court’s busy docket, the parties respectfully propose an abbreviated and consolidated claim construction briefing schedule and joint claim construction hearing for all parties in the Related Cases.

Substantial factual and legal overlap between the Related Cases for claim construction merits consolidation. The Related Cases involve the same plaintiff, KAIFI, and the complaints allege infringement of United States Patent Nos. 6,922,728 (the “’728 Patent”).

The impact to the Court and the parties on granting this motion would be as follows:

1. The claim constructions issued by the Court in *KAIFI LLC v. T-Mobile US, Inc.*, Case No. 2:20-CV-281-JRG (“T-Mobile Action”) would be applicable in *KAIFI LLC v. Verizon Communications Inc. et al.*, Case No. 2:20-CV-00280-JRG (“Verizon Action”).
2. There are two additional issues identified in the Verizon Action for which the parties would provide briefing, and the Court would hear oral argument during the T-Mobile claim construction hearing scheduled for June 3, 2021.
3. Verizon and KAIFI agree that all documents and deposition testimony and materials exchanged in accordance with the claim construction proceedings in the T-Mobile case apply in the Verizon Action.
4. Verizon and KAIFI retain all rights to appeal any claim construction order using any of the materials and arguments from the T-Mobile Action as though those arguments were made in the Verizon Action.

5. The Court's ruling on the two additional issues in the Verizon Action would apply in the Verizon Action.
6. The Court could cancel the August 11, 2021 claim construction proceeding in the Verizon Action currently scheduled before Judge Gilstrap.

Consolidation of the claim construction hearing would enhance efficiency for the Court and the parties by avoiding duplicative efforts and conserving judicial resources, and – in conjunction with an abbreviated and consolidated briefing schedule – would not prejudice the rights of any of the parties.

### **BACKGROUND**

KAIFI asserts patent infringement of the '728 Patent in the Related Cases. The Asserted Claims in each of the Related Cases are identical.

In the T-Mobile Action, the parties have completed P.R. 4-1 – P.R. 4-4. KAIFI has submitted their opening claim construction brief pursuant to P.R. 4-5(a) and T-Mobile is scheduled to respond on May 5, 2021. The claim construction hearing in the T-Mobile Action is scheduled for June 2, 2021 at 9:00 AM. *See* T-Mobile Action D.I. 73.

In the Verizon Action, the parties have exchanged proposed claim terms and preliminary constructions pursuant to P.R. 4-1 and P.R. 4-2 respectively. The briefing schedule ultimately leads to a claim construction hearing on August 11, 2021 before Judge Gilstrap. *See* Verizon Action D.I. 43.

After the parties reviewed their claim construction positions, it appears that there are only two terms for construction in the Verizon case that are not identically presented in the T-Mobile case:

- (1) “selecting one of the indoor and the outdoor networks in accordance with the

determined location of the data communication terminal” (claim 1) and

- (2) “a second step of determining whether when indoor system ID information is received by the data communication terminal and the received indoor system ID information is identical to the indoor system ID information stored in the location register” (claim 12).

In the T-Mobile Action, KAIFI submitted its opening claim construction brief with seven disputed terms. For each of these seven briefed terms, Verizon’s proposed construction matches T-Mobile’s proposed construction. Thus, for these terms, the Court will resolve the dispute in the T-Mobile Action and it is unlikely that additional briefing for a second claim construction hearing in the Verizon Action would alter the Court’s constructions from the T-Mobile Action.

### **ARGUMENT**

Consolidation is proper when the cases involve common issues of law and fact, it would avoid unnecessary delay or cost, and the rights of the parties are not prejudiced. Fed. R. Civ. P. 42(a); *St. Bernard Gen. Hosp., Inc. v. Hosp. Serv. Ass’n of New Orleans, Inc.*, 712 F.2d 978, 989 (5th Cir. 1983). In the Fifth Circuit, “district judges [are] ‘urged to make good use of Rule 42(a) ... in order to expedite the trial and eliminate unnecessary repetition and confusion.’” *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973) (quoting *Dupont v. S. Pac. Co.*, 366 F.2d 193, 195 (5th Cir. 1966)); see also *Vantage Point Tech., Inc. v. Amazon.com, Inc.*, No. 13-cv-909, 2015 WL 123593, at \*3 (E.D. Tex. Jan. 6, 2015) (“Consolidating cases for pretrial matters furthers convenience and economy in administration.”).

The Related Cases are pending before the same district court, in the same division, before the same judge. However, the parties note that the T-Mobile claim construction proceeding has been assigned to Judge Payne whereas the Verizon claim construction proceeding remains

assigned to Judge Gilstrap.

The Related Cases involve common issues of law regarding claim construction where many terms and proposed constructions for dispute are identical. For the issues as presented in the T-Mobile Action (including briefing), the parties agree that the T-Mobile constructions would be applicable in the Verizon Action. The parties agree that the claim construction issues in the T-Mobile Action will not be separately briefed by Verizon, and may be argued for defendants by either Verizon's or T-Mobile's counsel.

Consolidation of the claim construction proceedings and hearing for the Related Cases poses no risk of prejudice to any party, as indicated by KAIFI and Verizon jointly filing this motion. Consolidation of claim construction will conserve judicial resources by, among other things, reducing the burden on the Court to review duplicative briefing and hold separate hearings.

There will be no impact on the schedule for the T-Mobile case. For the two additional issues presented in the Verizon (as identified above), KAIFI and Verizon agree that the issues can be presented in shortened briefs. KAIFI and Verizon have agreed upon an accelerated briefing schedule for the issues not present in the T-Mobile action in which KAIFI's opening brief as follows:

<b>Date</b>	<b>Briefing</b>
<b>May 12, 2021</b>	KAIFI to file opening claim construction brief of no greater than 12 pages on the issues above
<b>May 19, 2021</b>	Verizon to file responsive claim construction brief no greater than 12 pages
<b>May 26, 2021</b>	KAIFI to file reply claim construction brief no greater than 5 pages

*See* Proposed Docket Control Order attached hereto as Ex. A.

KAIFI and Verizon recognize that this briefing schedule provides the completion of briefing only a week before the June 3, 2021 hearing but submit that the present motion has the benefit of entirely eliminating the August 11, 2021 hearing.

T-Mobile supports this consolidation.

Given the overwhelming common issues of law and fact related to claim construction, the parties respectfully request that the Court consolidate the Related Cases for claim construction purposes, allow KAIFI and Verizon to file shortened briefing on the schedule identified above and hold a consolidated Markman hearing on June 3, 2021 (the date presently scheduled for the T-Mobile Markman).

Dated: May 6, 2021

Respectfully submitted:

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